The Solicitors' Journal

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Current Topics.

Michaelmas Law Sittings.

TERM began on Monday, and again the reduction in the volume of litigation becomes apparent from the lists. In the King's Bench Division the number of actions for trial is 359, as compared with 511 in the corresponding term of last year and 1,263 in the corresponding term of 1939. Of these, there are 114 long non-jury actions and 215 short non-jury actions. There are nine actions in the Commercial List, and 21 short causes. In the Chancery Division the number of actions and matters for hearing is 101, as against 241 in the corresponding term of 1939. BENNETT and UTHWATT, JJ., will take the 43 actions in the non-witness list, and SIMONDS and MORTON, JJ., will take the 35 actions in the witness list. They will also have several retained and assigned matters. SIMONDS, J., will take the 73 company matters. There are two bankruptcy motions. In the Probate, Divorce and Admiralty Division the total number of suits is 1,671, of which 1,088 are undefended and 510 are defended causes. There are 30 undefended and seven defended nullity suits and 36 petitions under s. 176 of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended by the Matrimonial Causes Act, 1937. There are 16 Admiralty actions for trial. The total number of appeals is 99, as against 218 in the corresponding term of 1939.

The Solicitors' Bill.

ON the consideration of the Solicitors' Bill in Committee in the House of Commons on 1st October, Mr. DOUGLAS moved an amendment to the effect that the contribution which each solicitor should make to the compensation fund for persons who have suffered through solicitors' defaults should not exceed one per cent. of the net profits of the solicitor for the last accounting period for which an accountant's certificate had to be delivered. He argued that the larger the practice, the larger the risk involved, and the burden should be placed on those whose shoulders were strong enough to bear it. Both Major MILNER and the Attorney-General pointed out that the matter was considered by the Joint Select Committee. Major MILNER added that solicitors paid the same amount for their certificate to practice, £9 in London and £6 in the country, whatever their income, and in any case there would probably be some outcry among members of any business or profession which had to submit their takings to some outside body. The amendment was negatived. An amendment which was agreed to was moved by Major MILNER to the effect that the proposal for compulsory membership of all solicitors of The Law Society, in cl. 3, should come into operation on such day as the Lord Chancellor may by order appoint after he is satisfied on a poll taken by the Council of all solicitors for the time being holding practising certificates that not less than two-thirds of those voting are in favour of the provisions coming into operation. He expressed personal disagreement with the object of the amendment, but moved it because it had been put down as the result of an agreement to which they had all been parties. Another amendment which was agreed to was one moved by Major MILNER that the proposed delivery of accountants' certificates and the examination of solicitors' books, accounts and documents in cl. 1 should not come into operation until after the termination of the period during which the Emergency Powers (Defence) Act, 1939, is in force. He said that the solicitors' profession would have preferred the Bill to come into force at once, but unfortunately this was not possible, owing to a temporary shortage of the number of accountants available. The Bill was reported with amendments, read the third time, and passed with amendments.

Mr. Justice Brandeis.

THE career of Mr. Justice BRANDEIS, Justice of the Supreme Court of the United States at Washington from 1916 to 1939, who died in Washington on 5th October, full of years and honours, furnishes abundant illustration, if any were needed, of the benefits conferred by a free democracy in harnessing to the service of the state, regardless of race or creed, the services of its most brilliant citizens. Before his elevation to the Bench by PRESIDENT WILSON in 1916, he had practised in the law for some thirty-seven years and was widely known for his outstanding gifts of clear reasoning and argument. On the occasion of his seventy-fifth birthday in 1931 a volume was published in his honour with an introduction by Chief Justice HUGHES, and summaries and quotations from his statements on social questions, the interpretation of the American Constitution, industrial matters and the regulation of the railways. When the Supreme Court opened its session on Monday, 6th October, under Chief Justice HARLAN STONE, the court paid him a high tribute when it said that the workers of the United States owed him an unpayable debt, though they might not yet fully recognise it; for it was he who saw most clearly how the collective division of labour bred new forms of dependence, and how co-operation which technology made imperative carried with it an unescapable social coercion. BRANDEIS was never able to see social and economic life as built on the logical fictions so carefully framed by jurists. The ancient rule "ex facto jus oritur" must prevail, he said, "in order that we may have a system of living law." He was, as PRESIDENT WILSON eloquently said of him, "a friend of all just men and a lover of the right, and he knew more than how to talk about the right, he knew how to set it forward in the face of its enemies." The democracies can ill afford to lose men of his mettle at the present time, and it is one of the merits of democracy that it can produce such men.

Retirement of Magistrates.

IN acknowledging his election as President of the Magistrates Association at the Mansion House on 11th October, the Lord Chancellor said that he was surprised to find that there was a notion that justices of the peace should resign at the age of seventy-five. There was no such rule, said his lordship. He had introduced a system that future appointments should be upon the condition that new magistrates offered their resignation from the active list on reaching the age of seventy-five. That condition, he said, was not a cast iron rule, but designed to afford an opportunity without embarrassment to the individual, of deciding what was best in each individual case. Public justice sometimes suffered by the continuance in office of aged magistrates, and if the new system was used sympathetically and intelligently it would do much good. The Lord Mayor stated that it was very often lack of appreciation of their condition which caused aged magistrates to continue to sit. LORD SANKEY also spoke, on being elected as chairman of the Association, and said that magistrates

should be judged by the results of their sentences. The importance of avoiding any cast iron rule which might deprive the public of the benefits of the valuable and ripe experience of senior magistrates cannot be too greatly stressed, and the recent passing of the Justices (Supplemental List) Act and Rules, with their elastic provisions, should go far towards removing the more incapable and retaining the more efficient of our magistrates.

Deferment of Articled Clerks.

INTERESTING new information with regard to the deferment of the military service of articled clerks is given in the current issue of *The Law Society's Gazette*. It was held some time ago that where a clerk had entered for an examination which was due to commence within nine months from the date of registration, that was one of the tests to be taken into consideration in deciding whether any deferment should be granted (Decision No. 1529/40 (N.S.)). This rule has been very strictly applied, but in a later decision the Deputy Umpire held that the nine months' rule was not an invariable one to be applied in all cases (Decision No. 1837/41 (N.S.)). The facts were that the applicant was born on 16th September, 1921, and was registered for military service on 22nd February, 1941. On 14th March, 1941, he applied for postponement in order to take The Law Society's Final Examination in March, 1942. Although the applicant satisfied all the other tests laid down in Decision No. 1529/40, the Hardship Committee refused postponement on the ground that the examination was not due to commence within nine months of the date of registration. The Minister of Labour and National Service appealed from this decision on the ground that there were specific circumstances in this case which justified the grant of postponement. The applicant had apparently been relying on what he believed to be the fact, namely, that he would not be called upon to register until he reached the age of twenty. In his decision, the Deputy Umpire stated that that fact would not of itself have been a specific circumstance constituting exceptional hardship if a certificate were refused, but that it was further proved at the hearing of the appeal that relying upon public official notification that no man would be required to register until he was twenty, the applicant had incurred expense in fees in being coached in expectation that he would be able to take the next Final Examination after his twentieth birthday. As the examination was due to commence within nine months of the applicant's twentieth birthday the Deputy Umpire allowed the appeal.

Liabilities (War-Time Adjustment).

IN a written answer to a question by MR. ROSTRON DUCKWORTH in the House of Commons on 1st October, the Attorney-General stated that the figures for the London area with regard to the use that is being made of the Liabilities (War-Time Adjustment) Act, 1941, are as follows: The London adjustment offices have inquired into 260 cases, most of which are still being investigated, and have approved eight schemes. Twenty-seven protection orders and two adjustment orders have been made by courts in London. Instructions were given to supply figures for the three months ended 30th September for the rest of England, but they were not yet available. The figures for the next three months will be a fairer test of the extent to which the Act is proving useful, as by then the courts will have made orders in the cases already commenced. The Attorney-General said that he would consider from time to time whether steps were necessary and could usefully be taken to remove any misconceptions about the Act, but he doubted whether people were holding aloof because they feared that the measure was one of public assistance or bankruptcy. He would be ready to consider whether any misconceptions existed, and if so, whether steps could usefully be taken to remove them. It may be a little early as yet to assess the full practical value of the new Act. Its benefits will no doubt make themselves felt in due course, but in the meantime a little extra publicity about what it can do for persons whose businesses or professions are imperilled by the course of the war will not come amiss.

Practising Certificates and Stamp Duty.

THE Council of The Law Society announce in the current issue of *The Law Society's Gazette* that after further correspondence with the Board of Inland Revenue the Board have now been authorised to repay the stamp duty, or, as the case may be, a proportion of the stamp duty on the practising certificates of solicitors who are in full-time employment in such civil defence services as the Auxiliary Fire Service, the Ambulance Service and the War Reserve Police. This, it will be remembered, is an extension of the concession already made as to the repayment of stamp duty on the practising certificates of solicitors, whether male or female, who have been or are engaged on active service in the fighting forces (including those employed in uniform by the fighting services departments in military formations or units) and who have taken no active part in conducting the business of their firm while so engaged. The extension of the concession does not apply to solicitors engaged on legal or administrative work in a Government office. As in the case of solicitors serving in the armed forces, claims for repayment should be supported by a statutory declaration giving full particulars of the service and embodying a statement that the solicitor has not taken part in his profession as a solicitor during the period concerned, and it should be accompanied by the relative practising certificate or certificates. Claims should be sent to the Board of Inland Revenue, Imperial Hotel, Llandudno, and they will normally be accepted only after the end of the year covered by the certificate. There will also be a corresponding extension of the concessions with regard to the repayment of stamp duty on articles of clerkship of articled clerks losing their lives in the armed forces, on the admission of solicitors losing their lives in the armed forces where the solicitor had been admitted after joining the forces and had never practised, and on the articles of clerks abandoning the legal profession in consequence of war injuries. In this connection it is stated that repayment has been allowed of the duty on the articles of clerkship of an articled clerk who was killed in an air raid while still engaged on his legal work.

Deaths on the Road.

THE figures recently published with regard to deaths resulting from road accidents since the beginning of the war are such as to cause serious concern. The average pre-war figure for deaths on the road during the year was 6,500, but in the first year of the war the number became 8,538, and in the second year it grew to 10,253. The chief casualties on the road since the beginning of the war have been among pedestrians (10,000), pedal cyclists (2,800) and motor cyclists (2,400). A table has been issued showing the increases since the commencement of the war in the casualties of various types. In the three years since September, 1938, the number of road deaths among pedestrians under fifteen were 826, 846 and 1,258 respectively, and of pedestrians of fifteen and over, 2,233, 4,094 and 4,054 respectively. Deaths among motor cyclists during those three years increased from 950 to 971 and then 1,423. The figures for the three years for deaths among pedal cyclists of under fifteen were 177, 204 and 236, and for pedal cyclists of fifteen and over were 1,177, 1,053 and 1,295. This selection from the published figures is amply sufficient to show the alarming increase in the number of fatal accidents on the roads since the war began. As far as the number of persons injured on the roads since the war began is concerned, it is curious that the records of these figures taken since April, when the taking of these figures was resumed, shows that that number is almost a quarter below that of pre-war years. The official explanation of this appears to be that there is a greater recklessness on the roads, owing to the general tendency to disregard the risks of everyday life. Other possible explanations which are given are the heavier kind of traffic in use, higher rates of speed, deterioration in the standard of driving, decrease in police supervision owing to occupation with other duties, and the strain on the repair services. The number of persons killed during the black-out did not substantially contribute to the increase in the figures, but the fact remains that the number killed during the black-out in August was 198, a sufficiently serious figure. It is to be hoped that the recent relaxation in the lighting restrictions with regard to the second masked head-lamp on motor vehicles will do something towards bringing about a reduction of this figure. There is very small comfort in the fact that the number of road deaths for August in Great Britain was three fewer than a year ago, and the first monthly total since September, 1940, to show a reduction compared with the corresponding month of the previous year. The number was 729. Considerations both of humanity and of urgent man-power needs dictate that the most vigorous measures be taken to counteract this deadly menace, which causes one death in this country for every two caused by the enemy. Colonel J. J. LLEWELLIN, Joint Parliamentary Secretary to the Minister of Transport, in opening a campaign on 3rd October for a reduction in road accidents, said that a number of essential drivers were to be trained under a scheme sponsored by the Minister of Labour, and the police were making efforts to see that road behaviour and roads were more strictly controlled. Efforts were also to be made by means of films, B.B.C. talks, advertising and in other ways to reduce the number of accidents, and talks formerly given to children in schools were to be resumed. Our pre-war experience with regard to this grave and pressing problem is that nothing less than a vigorous handling of every possible cause of the trouble will suffice to bring about an improvement.

A Conveyancer's Diary.

Delegation of Trusts.

THERE is reported in a recent issue of the *Weekly Notes* a somewhat important case on the Execution of Trusts (Emergency Provisions) Act, 1939. By s. 1 (1) of that Act, it will be recalled, a trustee, personal representative, tenant for life or statutory owner is empowered, subject to various provisions, to " delegate to any person, or to two or more persons jointly," the exercise of his fiduciary duties during such time, broadly speaking, as he is away at the war. The question in *Re Earl of Feversham's Contract* [1941] W.N. 199, was whether it was lawful thereunder for a tenant for life, or other person who is within the terms of the section, to delegate to two or more persons *jointly and severally*. The facts were fairly simple. Lord Feversham, as tenant for life of certain settled estates, had, under this Act, appointed his wife and one H " jointly and each of them severally " to act as his attorneys to exercise any of his functions or powers as such tenant for life. On a sale of part of the settled property there was tendered to the purchasers a conveyance executed only by H, to which they objected that it should have been executed by both attorneys, and that, as it stood, it was ineffective. On the ensuing originating summons, Morton, J., pointed out that under the Interpretation Act, 1889, words in the singular in an Act are to include the plural unless a contrary intention appears. Section 1 (1) gave power to delegate to " any person," an expression which must be read as including " persons." The next sentence in the *Weekly Notes* is rather obscure, viz. : " if a power were given to two persons it could not be confined to a joint exercise of the power of both of them, but each was given the power severally." I am doubtful if this sentence is correctly reported, as it would appear to suggest that the learned judge said that it was impossible to confer a power of attorney under the Act on two or more persons jointly, a sentiment directly in conflict with the words of the Act. It appears more likely that the report in this Journal for 13th September is accurate on this point and that the learned judge really said, as is there reported, that the words " or to two or more persons jointly " were intended to remove any doubt there might have been on the possibility of conferring a joint power only. He also observed that the title of the Act was " An Act to facilitate the execution of trusts . . . " ; and that it would be very inconvenient if a trustee or tenant for life was bound to appoint one attorney only, as such attorney might die.

It appears, therefore, that the position under the Act is that a fiduciary person can appoint a single attorney or two or more attorneys, and that in the latter event such attorneys will be able to act severally unless the deed expressly says that they are to act jointly but not severally. It may well be that there are circumstances in which it is convenient to have two or more attorneys each capable of acting severally ; for example, in *Lord Feversham's Case*, it appears from the report in this Journal that Lady Feversham was out of the jurisdiction and so was not easily available to sign the proposed conveyance. Again, it would obviously be troublesome if there was only one attorney and he then died, as the learned judge pointed out. On the other hand, I cannot help thinking that most of us would be rather chary of appointing two or more persons to act severally as attorneys in the exercise of trusts. One can conceive the position arising, quite apart from the complications that would necessarily follow on any difference of opinion between the attorneys, where the two attorneys might purport to give two entirely different sets of directions. For example, suppose A and B are attorneys of a tenant for life and some urgent decision has to be made ; it could quite conceivably happen that communication between A and B fails, owing, for example, to a heavy air raid. Then A might contract to sell Blackacre to C and B to sell it to D. I suppose, in such a case, that the contract earliest in time would have to be fulfilled ; if so, then the other purchaser would presumably have his remedy both against the tenant for life and against the attorney who had purported to sell to him. Perhaps this case may sound far-fetched ; but I cannot help thinking that it is normally a mistake on principle to create two or more co-extensive authorities to exercise the powers of a single person.

In most cases it would be better to try some other means of getting over the difficulty contemplated by the learned judge. Thus, one can clearly provide for two or more attorneys, or the survivor or survivors of them, to act jointly so long as more than one of them survives ; for power is given in s. 1 (1) to appoint attorneys or an attorney to act " during the whole or any part of " the period of the donor's war service. The appointment envisaged above would be to X, Y and Z during such " part " of the donor's war service as all of them survive ; to the survivors during such " part " of the same as there are only two survivors, and so on. On the same principle, one could appoint N, or after his death or his release of his powers, P, and then Q, and so on. I do not think that any arrangement is objectionable at law which provides for a succession to the office of attorney, so long as the authority of the successor derives from the donor's own original deed. It would, however, be wrong to try to give the attorney a power to appoint his own successor, for that would infringe the maxim " *delegatus non potest delegare* " ; it is clear that this maxim normally applies to delegates appointed under this Act, for it is expressly provided by s. 4 that in the single limited case of appointing an attorney to transfer inscribed stock the delegate *is* to be able to delegate.

It will have been observed that I suggested above that the donor might give power to the continuing attorneys or attorney to act after a renunciation by one of several joint attorneys. I make this suggestion in order to try to deal with the sort of position which appears to have arisen in the *Feversham Case* by reason of one attorney having gone out of the jurisdiction. If the original deed were to constitute as attorneys " A and B to act jointly while both of them survive and remain attorneys hereunder and the surviving or continuing attorney after the death of either A or B or a release by either A or B of the powers hereby vested in him," then I think that upon A executing a release of his powers B could continue to act. Such a transaction would not be a delegation by A, as the continuing powers of B would arise under the original instrument and not by any creative act of A. Such a solution would not, of course, be entirely satisfactory, as it would be impossible, without a further reference to the donor to reappoint the retiring attorney, whereas one of two several attorneys who becomes unavailable continues to have the powers and can use them again when it again becomes convenient to do so. Exactly what is to be done must, of course, depend on the facts of each case, but I feel very reluctant to suggest that the practice of conferring equal authority on a number of several attorneys should become normal.

Landlord and Tenant Notebook.

The New Forms of Statutory Protection.

I.—Courts (Emergency Powers) Act, 1939

IN theory, something might be said for elevating " statutory tenants " into a genus with three species, namely, those protected by the Rent and Mortgage Interest (Restrictions) Acts, those protected by the Courts (Emergency Powers) Act, 1939, and those protected by the Liabilities (War-Time Adjustment) Act, 1941. But, apart from the fact that a particular individual may be found to belong to more than one, indeed to all three, of the suggested species, I think most of us will prefer to confine the use of the expression to the first-mentioned group, by whom it has so long been enjoyed, rightly or wrongly. For while in *Keeves* v. *Dean ; Nunn* v. *Pellegrini* [1924] 1 K.B. 685 (C.A.), Bankes, L.J., described the expression as " really a misnomer, for he is not a tenant at all," Lush, J., was content with a milder protest : " a person who, perhaps inaccurately, is called a statutory tenant," and Scrutton, L.J., frankly favoured its adoption : " But it is a convenient expression, and, although before the passing of these Acts no one would have spoken of a person who after the expiry of his tenancy remained in possession against the will of his landlord as a tenant, Parliament has certainly called him a tenant . . . "

It is well known that it took a long time to establish what were the main incidents of a statutory tenancy, and indeed there are still questions about a statutory tenant's rights and liabilities which could not readily be answered. And now that new forms of statutory protection of tenants remaining in possession against the wills of their landlords have been introduced, it may be useful to take a few of those incidents and discuss which of them are likely to be or become features of the recently created interests.

What might be called the statutory tenant's charter is contained in the Increase of Rent, etc., Act, 1920, s. 15 (1) : " A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act . . . " The earlier statutes had not troubled themselves with the question at all, and the Courts (Emergency Powers) Act, 1939, and the Liabilities (War-Time Adjustment) Act contain no corresponding provisions.

Case law established, *inter alia*, the following propositions concerning the status of the Rent Act statutory tenant. (1) He can enforce a covenant to repair by an action for damages, measured by the difference in value of the premises as it was between the date of notice of disrepair and the date

of assessment and what it would have been if repairs had been carried out on receipt of notice, plus an amount for damage to furniture resulting from the breach (*Hewitt* v. *Rowlands* (1924), 93 L.J.K.B. 1080 (C.A.)). (2) A statutory tenant may, according to *McIlroy* (*William*), *Ltd.* v. *Clements* (1923), 155 L.T. Jo. 362 (C.A.), be entitled to exercise an option for a new lease, not on the ground that such an option is a term or condition of the original contract of tenancy (which it is not), but on the ground that he is or is rather in the position of a tenant remaining in possession with the consent of the landlord (This reasoning does not appear to be consistent with that applied in authorities deciding that acceptance of rent from a statutory tenant does not in itself effect a new tenancy: *Davies* v. *Bristow* [1920] 3 K.B. 428; *Shuter* v. *Hersh* [1921] 1 K.B. 438). (3) A statutory tenant's right is purely personal and he loses the protection of the Acts if he assigns, sub-lets the whole of the premises, or goes out of possession (*Keeves* v. *Dean*, *supra* (assigning); *Roe* v. *Russell* [1928] 2 K.B. 117 (C.A.) (sub-letting); *Haskins* v. *Lewis* [1931] 2 K.B. 1 (C.A.) (absence)). On his death, the statutory tenantcy does not vest in the tenant's personal representatives (*Lovibond & Sons, Ltd.* v. *Vincent* [1929] 1 K.B. 687). (4) A statutory tenant cannot be made liable for double rent under L.T.A., 1730, s. 1 (*Crook* v. *Whitbread* (1919), 88 L.J.K.B. 959). (5) But service of a forfeiture notice under L.P.A., 1925, s. 146, is not a condition precedent to a claim for possession (*Brewer* v. *Jacobs* [1923] 1 K.B. 528).

Before examining in detail whether, and if so, to what extent these five selected propositions apply to tenants protected by the Courts (Emergency Powers) Act and the Liabilities (War-Time Adjustment) Act, one or two general statements may be made contrasting both these statutes with the Rent Acts. First, they apply to any tenancy; whereas the operation of the Rent Acts is limited to tenancies of dwelling-houses of specified rateable values. And secondly, the terms on which the tenant protected by the more recent legislation may retain rights are to some extent determined by a court or officer according to the circumstances of each particular case.

Beginning, then, with the "tenant" protected by some order made under the Courts (Emergency Powers) Act, 1939, the question is whether, if under the original contract of tenancy his landlord were liable for repairs, he would, like the tenant in *Hewitt* v. *Rowlands*, *supra*, be entitled to enforce that obligation by an action for damages. The original contract of tenancy may have been determined by forfeiture for non-payment of rent, the tenant being unable to seek relief on the ordinary C.L.P.A. terms; and the landlord, having obtained judgment for possession, would have to seek leave of court by virtue of s. 1 (3). (Whether leave would be necessary to enforce a judgment for possession obtained on the ground that the tenancy had expired by effluxion of time may be arguable; my own view is that neither s. 1 (2) (*a*) (ii) or (iii) nor any other provision applies—see 85 Sol. J. 346—but the draftsmen of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, may have thought that it did when defining "short tenancy" in s. 10, *ib.*) The appropriate court having formed the opinion that the tenant is unable immediately to pay the rent by reason of circumstances directly or indirectly attributable to the war, may, by s. 1 (4), refuse leave or give leave subject to such restrictions and conditions as it thinks proper.

Now Parliament has not even called the person protected by such refusal or conditional leave a "tenant" or "statutory tenant," and yet it is clear that he has, by virtue of a statutory enactment, a right to the exclusive possession of land of which he is not the owner, and if the leave be conditional it is likely that periodical payments of sums of money will be at least one of the conditions, and that there would at least be an analogy between sums so paid and rent. But if the order should omit to say anything about liability for repairs under the covenant, questions may arise not only about the tenant's enjoyment, but also about the rights of third parties; e.g., a passer-by injured owing to some defect, who would, on the strength of *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 244, naturally prefer to sue the judgment creditor—(I refrain from begging the question by calling him the landlord)—than add to the debtor's embarrassments without much prospect of improving his own position. These questions are far from easy, and stress the importance of seeing that the terms of the order cover the contingency; if they do not, *Hewitt* v. *Rowlands* is not helpful, but I suggest that some analogy might be drawn between the position of the debtor-tenant and a tenant whose lease has been forfeited for non-payment of rent, but who is entitled, under C.L.P.A., 1852, s. 212, to relief. But admittedly, the new statute does not *say*, as does the enactments mentioned, that the tenant is "to hold, and enjoy the demised lands, according to the lease thereof made."

The second question, whether the tenant would be able to exercise an option to renew conferred by the old tenancy agreement, may be equally difficult. The proposition given above is that a Rent Act statutory tenant *may* be so entitled, and in the case cited, *McIlroy* (*William*), *Ltd.* v. *Clements*, it was the wording of the particular option which enabled the court to construe it as one that might be exercised after the termination of the lease (though it was also held that on the facts the tenant had waived it). Most provisions for options limit the right to the term, and whatever the court may do under the Courts (Emergency Powers) Act, 1939, it cannot stay the effluxion of time, so if a judgment on the ground of term expired could be and were stayed under the Act, no problem would arise in such a case. But if it were a case of forfeiture, the same considerations would apply as in the case of the repairing covenant; does the order keep alive, or revive, the lease?

Thirdly, about alienation and going out of possession: as regards the latter, it is clear that the tenant need not, unless the order is made on that condition, retain actual possession; indeed, he need not have actual possession to obtain relief. As regards alienation, it may be useful to recall some Rent Act decisions earlier than those in *Keeves* v. *Dean* and *Roe* v. *Russell*. It was held in *Collis* v. *Flower* [1921] 1 K.B. 409 (before the 1920 Act), that a statutory tenancy passed to an executor; in *Parkinson* v. *Noel* [1923] 1 K.B. 117, that it passed to the statutory tenant's trustee in bankruptcy, as "property," and could be disclaimed by him: in *Mellows* v. *Low* [1923] 1 K.B. 522, that it passed to an administratrix, who had sub-let and whose sub-tenant was held to be protected. There seems to be no reason why the reasoning applied in these cases (though invalidated as regards Rent Act protegés, either by later legislation or by decisions of higher tribunals) should not apply to tenants protected by the Courts (Emergency Powers) Act, 1939, subject to the terms of the order of court; for the new statute contains nothing which would correspond to s. 15 (1) of the 1920 Rent Act.

The question of the applicability of L.T.A., 1730, s. 1, is not a difficult one. It seems reasonable to suppose that the landlord in *Crook* v. *Whitbread* was intent on airing a grievance rather than hopeful of obtaining a judgment for double rent; the answer was that the section says "*wilfully* hold over," interpreted in *Soulsby* v. *Neving* (1808), 9 Ea. 313, and other authorities as "contumaciously," and the tenant had a sound claim of right under the Rent Acts. The same would apply to a tenant protected by the Courts (Emergency Powers) Act, 1939.

As to the necessity or otherwise of a forfeiture notice, the position would appear to be as follows: In *Brewers* v. *Jacobs* the statutory provisions of the then Conveyancing Act, 1881, were held not to apply because that statute concerned only an existing term, whereas s. 15 (1) of the 1920 Rent Act itself limited the statutory tenancy by the words set out: "shall . . . observe . . . all the terms and conditions of the original contract of tenancy," and s. 5 (1) empowered the court to make an order for possession when any obligation of the tenancy was broken. The first part of this reasoning would apply to the interest of a person holding over by virtue of the Courts (Emergency Powers) Act, 1939; whether the rest would apply would depend on the terms of the order, but the applicability of the first part would settle the point in any event; there is no "lease" within the meaning of what is now L.P.A., 1925, s. 146, though s. 154, *ib.*, with its ". . . or other tenancy" defines the expression more widely than did the Conveyancing Act, 1881.

Obituary.

CAPTAIN Q. B. HURST.

We learn with the deepest regret that it has now been announced that Captain Quentin Berkeley Hurst, Rifle Brigade, who had previously been reported "missing," was killed in action last spring. Captain Hurst was the only son of Judge Sir Gerald Hurst, K.C., and Lady Hurst. After a distinguished career at Lincoln College, Oxford, where he obtained, among other things, a first class in modern history, he was called to the Bar by Lincoln's Inn in 1935. As was to be expected, he soon showed a natural ability and instinct for the law, and by the outbreak of war had a considerable and increasing Chancery practice. At the same time he continued historical studies and published a life of Henry of Navarre which was well thought of by those qualified to judge. Had he lived, he would, beyond doubt, have attained an outstanding place in the profession. Captain Hurst is survived by his widow, formerly Miss Rosemary Masefield, whom he married in 1938, and by one son born in 1940.

Mr. Arthur Nelson Brevitt, solicitor, of Wolverhampton, left £22,683, with net personalty £13,529.

Our County Court Letter.

The Liabilities of Chiropodists.

In a recent case at Barnstaple County Court (*Colston* v. *Frape*) the claim was for £122 15s. in respect of injury to the plaintiff's foot. The plaintiff's case was that she had visited the defendant for treatment for corns, and was told that her toes required treatment. During a second visit for that purpose, the defendant held her foot with both hands, and used considerable strength in twisting and jerking the foot. The result of the wrench was that the plaintiff experienced pain, and was unable to walk as well as formerly. The defendant's case was that he was a chiropodist and specialist in the fitting of shoes. He had diagnosed the plaintiff as suffering from a type of pressure on the nerves. The treatment had not involved a wrench, and the plaintiff had not incurred any more pain than beforehand. The working on the foot was designed to free the nerves and strictures, and might have upset a little stagnation. His Honour Judge Thesiger observed that the plaintiff had voluntarily submitted to the treatment, knowing the defendant was a chiropodist and not a surgeon. The defendant was not responsible for the primary injury to the foot, and there was no negligence or lack of skill in the actual treatment. There appeared, however, to have been something wrong either with the defendant's diagnosis or with his advice. He was liable for the latter, as, if the defendant did not know, he should have advised the plaintiff to see a doctor. The plaintiff was accordingly entitled to damages limited to the injury caused by the wrong treatment after the trouble arose, i.e., not for any unfortunate treatment which preceded it. Judgment was given for the plaintiff for £62 15s., with costs.

Decisions under the Workmen's Compensation Acts.

Knee Injury of Farm Worker.

In *Baldwin* v. *Lumby*, at Spalding County Court, the applicant was a farm worker, and on the 25th March, 1935, he had been kicked on the knee by a horse. On the 18th September, 1935, an agreement was recorded for the payment of 21s. per week. In April, 1936, an operation was performed to cure an abnormal mobility of the knee, which produced swelling and synovitis. The applicant's right arm, face and eyesight became affected, and he had been rejected for military service. No offer of hedging work had been received, but in any case the applicant was only fit for a sedentary occupation. In view of his total incapacity, the applicant claimed a review, viz., that the weekly amount be increased from £1 1s. to £1 5s. as from the 7th December, 1940, on the ground that there had been a 20 per cent. increase in the rate of remuneration for farm workers. The defendant's case was that he had offered the applicant hedging work, which was not heavy, and other light work was available on a part-time basis. A recent medical examination had shown that the applicant was suffering from an abnormal condition of mind, and so thought the symptoms were present. The leg might get stronger with use, and the applicant was capable of light work. The payment should therefore be reduced to 5s. per week as for partial incapacity. His Honour Deputy Judge William Smith made an award as claimed, plus the supplementary allowance, with costs.

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 2nd October :—
Appropriation (No. 2).
India and Burma (Postponement of Elections).
Local Government (Financial Provisions) (Scotland).

PROGRESS OF BILLS.

HOUSE OF LORDS.

Marriage (Members of H.M. Forces) Bill [H.L.].
Read Third Time. [14th October.

Agriculture (Miscellaneous Provisions) Bill [H.C.].
Read First Time. [14th October.

HOUSE OF COMMONS.

Prolongation of Parliament Bill [H.C.].
Read Third Time. [14th October.

Local Elections and Register of Electors (Temporary Provisions) (No. 2) Bill [H.C.].
Read Third Time. [14th October.

Mr. A. M. Langdon, K.C., has resigned the Recordership of the City of Salford.

Mr. WALTER HEDLEY, K.C., the Clerkenwell Magistrate, has been appointed to succeed Mr. Edward C. P. Boyd at the Marlborough Street Police Court.

To-day and Yesterday.

LEGAL CALENDAR.

13 October.—Sir Ford North died at Carron in Morayshire on the 13th October, 1913, nearly fourteen years after his retirement from the Bench. Essentially a Chancery lawyer of the old school, he was unfortunate in being first of all promoted to a common law judgeship. By the time he had painfully displayed his lack of knowledge of the rough and tumble world, with which he was expected to deal in the criminal courts and on circuit, there was fortunately a vacancy elsewhere and he returned to the Chancery Division. Even there he proved notably slow in his methods, though sound and conscientious, and he was apt to resent any attempts at the Bar to accelerate his pace. In his appearance there was something of the village squire.

14 October.—William Guest was the son of a clergyman in Worcester. He went into business, did well, came to London, took a shop in Holborn and there too prospered. This and his father's good name procured him a clerkship in the Bank of England and there he came into contact with gold "the root of all evil." Temptation coincided with a bright idea. He would take guineas from his drawer at the Bank, file them down, give them a new milled edge, by means of a curious machine specially obtained for the purpose, and return them again. Of the filings he made ingots which he sold. He was in time discovered, convicted and sentenced to death. On the 14th October, 1767, he was hanged at Tyburn, going to the place of execution in a suit of mourning and a club wig. He showed penitence and resignation.

15 October.—On the 15th October, 1664, Evelyn dined with Lord Clarendon. "After dinner my Lord Chancellor and his lady carried me in their coach to see their palace (for he now lived at Worcester House in the Strand) building at the upper end of St. James's Street, and to project the garden. In the evening I presented him with my book of architecture as before I had done to His Majesty and the Queen Mother. His lordship caused me to stay with him in his bed-chamber, discoursing of several matters very late, even till he was going into is bed." This magnificent new palace brought the Chancellor great unpopularity, for Dunkirk had lately been ceded to the French and his enemies suggested that he had taken a huge bribe over the transaction and that this provided the funds for the building.

16 October.—On the 16th October, 1747, two interesting malefactors were sentenced at the Old Bailey to seven years' transportation. They were John Lamb, sexton, and William Bilby, gravedigger, of St. Andrew's, Holborn, and they had stolen a hundred and fifty lead coffins out of the church.

17 October.—On the 17th October, 1807, a sailor named Thomas Wood was hanged for taking part in a mutiny on board the "Hermione" ten years before. At the court-martial at Plymouth the only witness was the captain of that ship and he positively identified him as having played an active part. His written defence admitted the fact and only pleaded his youth at the time (he could not have been more than sixteen) and intimidation by the mutineers. His relatives, however, obtained a certificate from the Navy Office that at the time he was a boy on board the "Marlborough" at Portsmouth. On an inquiry instituted by the Attorney-General it appeared that he had asked another man to write his defence and had been so impressed by the eloquence of the product that he had decided that it was more likely to serve him than a mere denial. It hanged him instead.

18 October.—On the 18th October, 1749, Bosavern Pen Lez was hanged at Tyburn for taking part in a riot in the Strand.

19 October.—On the 19th October, 1660, Pepys recorded : "This morning Hacker and Axtell were hanged and quartered as the rest are." They were former Colonels under the Commonwealth and they died for their part in the trial of Charles I. As regards Hacker, Pepys was inaccurate, for his body was given whole to his friends for burial and they are said to have interred it in St. Nicholas Cole Abbey.

THE WEEK'S PERSONALITY.

One night in 1749 a party of sailors from H.M.S. "Grafton" were robbed at a bawdy-house in the Strand. Later they returned with a large number of their comrades and after totally wrecking the place they proceeded to sack several similar establishments as far off as the Old Bailey and Goodman's Fields, other people joining in the riot to the number of four hundred. Several were arrested and some condemned to death, but ultimately only one young man was hanged. He was buried at the expense of the parish of St. Clement Danes and his story is best told in his epitaph : "To the memory of the unfortunate Bosavern Pen Lez who finished a life generally well reported of by a violent and ignominious death. He was the son of a clergyman, to whom

he was indebted for an education which he so wisely improved as to merit the love and esteem of all that knew him. But actuated by principles in themselves truly laudable (when rightly directed and properly restrained) he was hurried by a zeal for his countrymen and an honest detestation of public stews (the most certain bane of youth and the disgrace of Government) to engage in an undertaking which the most partial cannot defend and yet the least candid must excuse. For thus deliberatly mixing with rioters, whom he accidentally met with, he was condemned to die and of 400 persons concerned in the same attempt, he only suffered, tho' neither principal nor contriver. How well he deserved life appeared from his generous contempt of it in forbidding a rescue of himself."

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL *from the 16th September, 1939, to the 11th October, 1941.*)

STATUTORY RULES AND ORDERS, 1941.

E.P. 1543. **Bread** (Control and Maximum Prices) Order, 1941. General Licence, October 1.
E.P. 1542. Bread (Control and Maximum Prices) Order, October 1.
E.P. 1500. **Consumer Rationing** (No. 6) Order, September 27.
E.P. 1490. **Control of Fertilisers** (No. 12) Order, 1941. Direction No. 2, September 25.
E.P. 1494. Control of Fertilisers (No. 15) Order, September 25.
E.P. 1533. Control of Jute (No. 3) Order, October 1.
E.P. 1493. Control of Paper (No. 35) Order, September 24.
E.P. 1545. Control of Paper (No. 32) Order, 1941. Direction No. 2, October 1.
E.P. 1527. **Feeding Stuffs** (Maximum Prices) Order, 1940. Amendment Order, September 30.
E.P. 1528. Feeding Stuffs (Rationing) Order, 1941. Directions, September 30.
E.P. 1496 **Flour** (Control and Prices) Order, 1941. General Licence, September 24.
E.P. 1529. Flour (Control and Prices) Order, 1941. Amendment Order, September 30.
E.P. 1530. Flour (Maximum Retail Prices) Order, September 30.
No. 1546. **Foreign Representatives** (Administration of Oaths) (No. 2) Order, September 23.
No. 1535. **Goods and Services** (Price Control). The Prices of Goods Act, 1939, (Amendment of First Schedule) Order, September 25.
E.P. 1544. **Home Grown Beans** (Control and Maximum Prices) (Northern Ireland) Order, October 1.
E.P. 1541. Home Grown Dredge Corn (Control and Maximum Prices) Order, 1941. Amendment Order, October 1.
No. 1523. **Import Duties** (Exemptions) (No. 3) Order, October 1.
No. 1471. **Motor Vehicles** (Authorisation of Special Types) Order (No. 3), September 16.
E.P. 1531. **Oat Products** (Control and Maximum Prices) Order, September 30.
E.P. 1532. **Potatoes** (1941 Crop) (Control) (No. 2) Order, September 30.
No. 1534/L.27. **Public Trustee** (Custodian Trustee) Rules, September 26.
E.P. 1499. **Removal and Storage of Household Chattels** Order, September 26.
E.P. 1520. **Retail Coal Prices** (No. 2) Order, September 29.
No. 1476. **Tax Free Payments** (Transitional Provisions) Regulations, September 24.

[E.P. indicates that the Order is made under Emergency Powers.]

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Four High Court Judges, Mr. Justice Tucker, Mr. Justice Croom-Johnson, Mr. Justice Staples, and Mr. Justice Hallett, wearing their scarlet robes and full-bottomed wigs, attended the Central Criminal Court on Tuesday to appoint the judicial sittings of the four courts for the ensuing year. The Lord Mayor, Sir George Wilkinson, presided.

The dates agreed upon were announced as follows:—1941: 11th November, 2nd December; 1942: 7th January, 3rd and 24th February, 17th March, 15th April, 13th May, 23rd June, 14th July, 8th September, and 13th October.

Two sessions have been arranged for February, as the Central Criminal Court does not sit in August, the period of the summer vacation.

The death occurred on Thursday, 25th September, of Mr. Thomas James Dunningham, within three days of his ninety-first birthday. For sixty-eight years he had been the highly valued and faithful friend of Messrs. Howard, Inglis and Keeling (afterwards of Messrs. Howard, Ellison and Morton) formerly of Colchester, solicitors.

Notes of Cases.

COURT OF APPEAL.

In re **Robb's Contract.**

Lord Greene, M.R., Clauson and du Parcq, L.JJ.
22nd, 23rd, 29th, 31st July, 1941.

Revenue—Conveyance on trust for sale—Stamp ten shillings—Stamp not adjudicated—Whether purchaser entitled to require adjudication—Finance (1909–1910) *Act*, 1910 (8 & 9 *Edw.* 7, *c.* 8), *s.* 74.

Appeal from a decision of Simonds, J. (*ante*, p. 264).

By a conveyance dated the 31st March, 1932, D, as settlor, conveyed to trustees certain land upon trust to sell the same and to hold the net proceeds upon the trusts to be declared by a settlement of even date. The deed was stamped ten shillings. The stamp was not adjudicated. The purchaser, having agreed to purchase the property, sent in a requisition requiring the vendors to have the stamp on the conveyance of 1932 adjudicated. The vendors refused to comply with this requisition, and the purchasers took out this summons. The Finance (1909–1910) Act, 1910, s. 74, subs. (1), provides that any conveyance operating as a voluntary disposition shall be chargeable with the like duty as a conveyance on sale. Subsection (2) provides that the Commissioners may be required to express their opinion under s. 12 of the Stamp Act, 1891, on any conveyance operating as a voluntary disposition "and no such conveyance or transfer shall be deemed to be duly stamped unless the Commissioners have expressed their opinion thereon in accordance with that section." Subsection (6) provides that "a conveyance . . . under which no beneficial interest passes in the property conveyed . . . shall not be charged with duty under this section."

SIMONDS, J., held that the conveyance was an instrument under which no beneficial interest passed and therefore fell within subs. (6) of s. 74. He further held that the language of subs. (2) was comprehensive and subs. (6) could not be read as taking instruments within its scope outside the section so that they were neither chargeable with duty nor subject to adjudication under subs. (2). He accordingly held that the requisition had not been sufficiently answered. The vendors appealed.

LORD GREENE, M.R., dismissing the appeal, said that subs. (2) of s. 74 prescribed that every conveyance or transfer which fell within the definition of "a voluntary disposition *inter vivos*" must bear an adjudication stamp, and if it did not, it was not to be deemed to be duly stamped. It was argued that the effect of subs. (6) was to remove from the ambit of charge all documents of the description there set forth and to exempt such documents from the provisions of subs. (2). Such a construction would avoid very serious inconveniences in the conduct of affairs. He was, however, unable to construe subs. (6) in such a way as to avoid those inconveniences without doing to the language a violence which was not justified. Subsection (6) did not exclude the documents there mentioned from the whole operation of the section.

CLAUSON and DU PARCQ, L.JJ., agreed.

COUNSEL: *J. Neville Gray*, K.C., and *G. D. Johnston*; *Norman Daynes*, K.C., and *C. A. J. Bonner*.

SOLICITORS: *Fladgate & Co.*; *Evill & Coleman*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re **V. G. M. Holdings, Ltd.**

Morton, J. 22nd September, 1941.

Practice—Stay of execution on security for £5,000 being given—Application to reduce amount of security—Jurisdiction of court to vary the order.

Motion.

On the 26th August, 1941, on a misfeasance summons, Bennett, J., awarded to the applicant, the liquidator of H, Ltd., £15,980 damages with certain interest. The respondent applied for a stay of execution pending appeal, and the order of the learned judge provided that on the respondent giving security to the satisfaction of the court in the sum of £5,000 within four weeks from the date of the order and giving notice of appeal within that period execution was to be stayed until the appeal had been heard or disposed of. This order was duly passed and entered. By this application the respondent asked Morton, J., for an order that, if £3,000 was paid into court within seven days, there should be a stay of execution. The liquidator submitted that there was no jurisdiction to make the order.

MORTON, J., said that he had grave doubts whether, if Bennett, J., were sitting, he would have jurisdiction to make the order asked for. Bennett, J., had exercised his jurisdiction as to the amount of the security and the time within which it was to be given, and he was inclined to think that Bennett, J., was *functus officio*. Strange results would follow if this were not so. Where such an order had been made the only remedy for the respondent, if he were dissatisfied with the order, was to go to the Court of Appeal. Neither Bennett, J., nor himself had jurisdiction to make the order. On the facts, if he had jurisdiction, he would not make such an order.

COUNSEL: *Wallington*, K.C., and *Heckscher*; *Raymond Jennings*.

SOLICITORS: *C. Butcher* and *Simon Burns*; *Sidney Pearlman*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]